

CHAPTER 4
PLACEMENT

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4.1. EMERGENCY PLACEMENT

Occasionally workers encounter a child under circumstances that require immediate removal of the child from a dangerous environment. If a worker cannot obtain cooperation of the parents, it may be necessary to obtain authority for an emergency placement to protect the child. There are three ways under Michigan law to take custody of a child on an emergency basis pending a preliminary hearing.

4.1.1. *Law Enforcement Action without a Court Order*

Protective services workers do *not* have the power to detain children. When faced with a situation in which a child's surroundings place the child in immediate danger, the worker should contact a law enforcement officer. The Juvenile Code gives law enforcement the power to remove a child from immediate danger:

Any local police officer, sheriff or deputy sheriff, state police officer, county agent or probation officer of any court of record may, without the order of the court, immediately take into custody any child *** whose surroundings are such as to endanger his or her health, morals or welfare.¹

Michigan court rules clarify the procedure the officer must follow. The officer may take a child into protective custody "if, after investigation, the officer has reasonable grounds to conclude that the health, safety or welfare of the child is endangered."²

Once an officer takes a child into custody, the officer is required to immediately attempt to notify the parent, guardian, or custodian.³ Unless the child requires detention as provided under the Juvenile Code, the officer is required to accept the written promise of the parent, guardian, or custodian to bring the child to the court at a time determined in the written

¹. MCL 712A.14(1)

². MCR 3.963(A)

³. MCL 712A.14(1)

statement and then release the child to the parent, guardian, or custodian.⁴ If the child is not released by the officer, the child and his or her parent(s), guardian or custodian if they can be located, are to be immediately brought before the court for a preliminary hearing.⁵ Court approval is necessary for continued detention of the child and the statute requires that an order signed by the judge or a referee authorizing the filing of a complaint (petition) be entered and if it is not, that the child be released to the parent(s), guardian or custodian.⁶ The statute or rules do not define "immediately" beyond the common meaning of the word.

The court rules require the officer taking a child into custody to:

- (1) immediately attempt to notify the child's parents, guardian, or legal custodian of the protective custody;
- (2) inform the parent, guardian, or legal custodian of the date, time, and place of the preliminary hearing scheduled by the court;
- (3) immediately bring the child to the court for preliminary hearing, or immediately contact the court for instruction as to placement pending preliminary hearing;
- (4) if the court is not open, contact the person designated under MCR 3.934(B)(2) for permission to place or release the child pending preliminary hearing;
- (5) ensure that the petition is prepared and submitted to the court;
- (6) prepare a custody statement similar to the statement required for detention of a juvenile as provided in MCR 3.934(A)(4) and submit it to the court.⁷

The custody statement referred to in subsection 6 should include the grounds for and the time and location of detention and the names of persons notified and the times of notification or the reason for failure to notify.⁸

⁴. *Id.*

⁵. MCL 712A.14(2)

⁶. *Id.*

⁷. MCR 3.963(C)

⁸. MCR 3.934(A)(4)

The need for immediate action does not always occur during business hours, of course. The court is required to designate a judge, referee, or other person who may be contacted by an officer taking a child into custody during hours the court is not open and in each county there must be a facility open at all times where an office may obtain the name of the person to be contacted for permission to detain the juvenile pending a preliminary hearing.⁹ The juvenile judge or his or her designated person has the authority to enter emergency protective custody orders pending preliminary hearing as discussed below.

4.1.2. *Emergency Protective Custody Orders*

Once a complaint or petition is filed the court may order a child detained pending hearing if his or her home conditions make immediate removal necessary.¹⁰ The court may order an officer or other person to immediately take a child into custody when, after being presented with a petition, a judge or referee has reasonable grounds to believe that conditions or surroundings under which the child is found are such as would endanger the health, safety, or welfare of the child.¹¹ The court may include in such an order:

- (1) an authorization to enter specified premises to remove the child, and
- (2) a directive to place the child in protective custody pending preliminary hearing.¹²

Emergency court orders are generally issued *ex parte*, that is, without a formal hearing or the presence of all interested parties. Typically the protective services worker confers with the judge or referee in his or her office and presents the facts and circumstances and the written petition.

The officer taking a child into custody, with or without a court order, is required to take the same steps outlined in MCR 3.963(C) recited above. If the court orders a person other than an officer to take a child into custody, it is not clear who should assume the responsibility to notify the parents and bring the child to court under MCR 3.963(C). Presumably the court would direct the petitioner (who is most likely to be a protective services worker) or its own staff to do so.

⁹. MCR 3.934(B)(2)

¹⁰. MCL 712A.15

¹¹. MCR 3.963(B)

¹². *Id.*

4.1.3. *The Hospital*

If a child is brought to a hospital and the attending physician determines that the release of the child would endanger the child's health or welfare, the child protection law provides:

If a child suspected of being abused or neglected is admitted to a hospital or brought to a hospital for outpatient services and the attending physician determines that the release of the child would endanger the child's health or welfare, the attending physician shall notify the person in charge and the department. The person in charge may detain the child in temporary protective custody until the next business day of the probate court, at which time the probate court shall order the child detained in the hospital or in some other suitable place pending a preliminary hearing as required by *** section 712A.14 of the Michigan Compiled Laws, or order the child released to the child's parent, guardian or custodian.¹³

The hospital is to designate the "person in charge" who is often the attending physician, chief of pediatrics or the hospital administrator.

4.2. PRETRIAL PLACEMENT

4.2.1. *Placement with Someone Other than Parent*

"Placement" is defined as "court-approved transfer of physical custody of a child to foster care, a shelter home, a hospital, or a private treatment agency."¹⁴ At the Preliminary Hearing, if the child is not released to the parent, the court rules require the court to receive evidence that the criteria for placement are met. The respondent is to be afforded the opportunity to cross-examine witnesses, to subpoena witnesses, and to offer proof to counter the allegations against him or her. The respondent may waive the probable cause determination.¹⁵ When custody of a child is at stake, the court may adjourn the hearing, but only up to 14 days to secure attendance of a witness or for good cause shown.¹⁶

¹³. MCL 722.626(1)

¹⁴. MCR 3.903(C)(8)

¹⁵. MCR 3.965(C)(1)

¹⁶. **MCR 3.965(B)(10)**

4.2.2. *Criteria for Pretrial Placement*

Michigan law creates a preference for maintaining the child in his or her own home and provides for various means to remove the danger from the child's home, rather than removing the child. *See* discussion in Chapter 6, **Preliminary Hearing**. The court may place the child with someone other than a parent pending trial or further court order if it makes "contrary" to the "welfare determination" under MCL 3.965(C) and (D).

The "contrary to the welfare of the child" test for removal of a child from parental care is the same test required at the permanency planning hearing for return of the child to the parent's custody. That is the child is to be returned at permanency planning unless return is "contrary to the welfare of the child."¹⁷ The law recognizes that placement of a child and separation from the family carries its own risk and that government is unable to eliminate all risk to children to zero. The law presumes children are ordinarily best served by placement in their natural families and thus some level of risk in the natural family is tolerated. Only if the threatened harm amounts to a "substantial risk" is placement of the child away from the parents permitted. Without making compromises on child safety, protection of the child in the family by measures less drastic than out of home placement is encouraged.

Federal law requires that the court find that reasonable efforts have been made to prevent or eliminate the risk to the child necessitating placement. The reasonable efforts finding is required to receiving federal funds for foster placement.¹⁸

If the court orders placement, the court must make a written statement of findings or place the findings on the record in a form capable of being transcribed.¹⁹ If the child is not released, the child must be placed in the most family-like setting consistent with the needs of the child.²⁰ In protective proceedings there is no right to bail for release of a child in custody of the court.²¹ The requirement to determine probable cause to place a child in foster care is not jurisdictional.²²

¹⁷. MCR 3.903(C)(3) defines "contrary to the welfare of the child" to include, but is not limited to, situations in which the child's life, physical health, or mental well-being is unreasonably placed at risk.

¹⁸. 42 USC 670 et seq; *See also* Adoptions Safe Family Act, 105 Pub L 89, 111 Stat 1115

¹⁹. MCR 3.965(C)(3)

²⁰. MCR 3.965(C)(2)

²¹. MCR 3.965(C)(5)

²². *In re Albring*, 160 Mich.App. 750 (1987)

4.2.3. *Court Review of Pretrial Placement and Custody Orders*

“Upon motion of any party, the court shall review custody and placement orders and initial services plans pending trial and may modify those orders and plans as the court considers under this section are in the juvenile’s best interests.”²³

4.3. **PLACEMENT IN FOSTER CARE**

4.3.1. *Definition*

“Foster care” means a 24-hour-a-day substitute care for children placed away from their parents, guardians, or legal custodians, and for whom the court has given the [DHS] placement and care responsibility, approved under 1973 PA 116, MCL 722.111 to 722.128, or care provided to a juvenile in a relative’s home under a court order.²⁴ Note that “foster care” includes relative placement under a court order.

In determining placement of a child at the preliminary hearing pending trial the court must order the child placed “in the most family-like setting available consistent with the juvenile’s needs.”²⁵ At dispositional hearing a child may be placed in a foster care home subject to the court’s supervision and the case plan shall^{26,27}:

[P]rovide for placing the child in the most family-like setting available and in as close proximity to the child’s parents’ home as is consistent with the child’s best interests and special needs.

4.3.2. *Release of Information to Person Providing Foster Care.*

In the order placing the child in care, the court is to include an order directing the release of information about the child.

If a child is placed in foster care, within 10 days after receipt of a written request, the agency shall provide the person who is providing the foster care with copies of all initial, updated, and revised case service plans and court orders relating to the child and all of the child’s medical, mental health, and education reports, including reports compiled before the child was placed with that person.²⁸

²³. MCL 712A.13a(12)

²⁴. MCL 712A.13a(e); MCR 3.903(C)(4)

²⁵. MCL 712A.13a(10)

²⁶. MCL 712A.18(c)&(d)

²⁷. MCL 712A.18f(3)

²⁸. MCL 712A.13a(13)

The court is also to order that the parent, guardian, or custodian provide the Agency with the name and address of each of the child's medical providers and order that the child's medical providers release the child's medical records.²⁹

Before placing a child with foster parents, the child placing agency is required to provide them the following written information:

- (a) Any history of abuse or neglect of the child
- (b) All known emotional and psychological problems of the child.
- (c) All behavior problems of the child that might present any risk to the foster family.
- (d) Any other information necessary to enable the foster family to provide a stable, safe, and healthy environment for the foster child and for other members of the foster family.³⁰

The Agency is also required to explain to the foster parents that the information provided above about the child and the child's family is confidential.³¹

4.4. INVESTIGATING RELATIVE PLACEMENT

4.4.1. *Relative Placements Favored; Background Checks Required*

The practice in Michigan courts and within the child welfare agencies is to seek relatives to care for a child when out of home placement is necessary. At the dispositional hearing the court is authorized to place the child under supervision in the child's own home or in the home of an adult who is a relative to the child.^{32, 33}

"Relative" means an individual who is at least 18 years of age and related to the child by blood, marriage, or adoption, as grandparent, great-grandparent, great-great-grandparent, aunt or uncle, great-aunt or great-uncle, great-great-aunt or great-great-uncle, sibling, stepsibling, nephew or niece, first cousin or first cousin once removed, and the spouse of any of the above, even after the marriage has ended by death or divorce. A child may be placed with the parent of a man whom the court has found probable cause to believe is the putative father if there is no man with legally

²⁹. MCL 712A.13a(14)

³⁰. MCL 722.954(2)

³¹. MCL 722.954(3)

³². MCL 712A.18(1)(b); *See also* MCL 712A.13a(1)(j).

³³. MCL 712A.13a(1)(j).

established rights to the child. A placement with the parent of a putative father is not to be construed as a finding of paternity or to confer legal standing on the putative father.

The court may order terms and conditions of placement including reasonable rules for the conduct of the custodian as the court determines necessary for the physical, mental or moral well-being and behavior of the juvenile.³⁴

Even at the initial placement of a child with a relative, the Juvenile Code allows the court to place a child with a relative without the relative being licensed as a foster home so long as the court determines that conditions of custody are adequate to keep the child safe. The statute reads³⁵:

If a petition alleges abuse by a person [living in the child's home] *** the court shall not leave the child in or return the child to the home or place the child with a person not licensed under 1973 PA 116, MCL 722.111 to 722.128, unless the court finds that the conditions of custody at the placement and with the individual with whom the child is placed are adequate to safeguard the child from risk of harm to the child's life, physical health, or mental well-being.

Furthermore, the statute allows relative placement, in the court's discretion as provided immediately above, before a full home study and criminal record check.³⁶

Before or within 7 days after a child is placed in a relative's home, the [Department of Human Services] shall perform a criminal record check and central registry clearance. If the child is placed in the home of a relative, the court shall order a home study to be performed and a copy of the home study to be submitted to the court not more than 30 days after the placement.

4.4.2. *Search for Suitable Relative Placement Required.*

The child welfare agency is required, within 30 days of removal from the parent or custodian, to identify, locate and consult with relatives to determine placement with a fit and appropriate relative who would meet the child's developmental, emotional, and physical needs as an alternative

³⁴. MCL 712A.18(1)(b).

³⁵. MCL 712A.13a(5)

³⁶. MCL 712A.13a(9)

to foster care.³⁷ Not more than 90 days after the child's removal from his or her home, the supervising agency is required to do the following³⁸:

- (a) Make a placement decision and document the reason for the decision.
- (b) Provide written notice of the decision and the reasons for the placement decision to the child's attorney [lawyer-guardian ad litem], guardian, guardian ad litem, mother, and father; the attorneys for the child's mother and father; each relative who expresses an interest in caring for the child; the child if the child is old enough to be able to express an opinion regarding placement; and the prosecutor.

A person receiving such a notice may, within 5 days, request in writing documentation of the reasons for the decision. A person who does not agree with the placement decision may request that the child's lawyer guardian ad litem review the decision. If the child's attorney determines the decision is not in the child's best interest, within 14 days after the date of the written decision the attorney shall petition the court that placed the child out of the child's home for a review hearing. The court shall commence the review hearing not more than 7 days after the date of the attorney's petition and shall hold the hearing on the record.³⁹

4.5. PARENTING TIME

4.5.1. *Pretrial Contact Between Parent and Child*

Research has demonstrated that one of the most important facilitators of parent-child reunification is frequent visitation. Michigan law provides for generous contact between parent and child:

If a juvenile is removed from his or her home, the court shall permit the juvenile's parent to have frequent parenting time with the juvenile.⁴⁰

Parenting time (or visitation) must be done consistent with child safety and child well-being. The statute goes on to say:

However, if parenting time, even if supervised, may be harmful to the juvenile, the court shall order the child to have a psychological

³⁷. MCL 722.954a

³⁸. MCL 722.954a(2)(a)&(b) (but note that under MCL 3.965(D)(1) the court must make the "reasonable efforts to prevent removal" determination within 60 days of placement with someone other than the custodial parent, guardian, or legal custodian).

³⁹. MCL 722.954a(3)

⁴⁰. MCL 712A.13a(11)

evaluation or counseling, or both, to determine the appropriateness and the conditions of parenting time. The court may suspend parenting time while the psychological evaluation or counseling is conducted.⁴¹

The court rules impose a strong duty upon the court to enforce the parent and child's right to frequent contact:

Unless the court suspends parenting time pursuant to 19b(4), or unless the child has a guardian or legal custodian, the court must permit each parent frequent parenting time with a child in placement unless parenting time, even if supervised, may be harmful to the child.⁴² (Emphasis added)

4.5.2. *Dispositional Orders for Parenting Time*

The case service plan required of the agency prior to disposition must include a schedule for regular and frequent parenting time between the child and his or her parent which *shall not be less than* once every 7 days.⁴³

The supervising agency is required to monitor the child's placement and the visits between parent and child⁴⁴:

The supervising agency shall require that its worker make monthly visits to the home or facility in which the child is placed. The supervising agency shall also require its worker to monitor and assess in-home visitation between the child and his or her parents. To ensure the occurrence of in-home visits required under this subsection, the supervising agency shall institute a flexible schedule to provide a number of hours outside of the traditional workday to accommodate the schedules of the individuals involved.

4.5.3. *Parenting Time Automatically Suspended Upon Petition to Terminate Parental Rights.*

If a petition to terminate parental rights to a child is filed, parenting time for a parent who is a subject of the petition is automatically suspended and, except as otherwise provided in the subsection, remains suspended at least until a decision is issued on the termination petition. If a parent whose parenting time is suspended under this subsection establishes, and

⁴¹. *Id.*

⁴². MCR 3.965(C)(6)(a)

⁴³. MCL 712A.18f(3)(e)

⁴⁴. MCL 722.954b(3)

the court determines, that parenting time will not harm the child, the court may order parenting time in the amount and under the conditions the court determines appropriate.⁴⁵

4.6. DISPOSITIONAL REVIEW OF PARENTING TIME AND PLACEMENT

At a Dispositional Review Hearing, the court is to review on the record, among other things, the parent's compliance with the case service plan prepared pursuant to MCL 712A.18f.⁴⁶

Placement of the child is also reviewed at Dispositional Review⁴⁷:

At a review hearing ***, the court shall determine the continuing necessity and appropriateness of the child's placement and shall order the return of the child to the custody of the parent, continue the dispositional order, modify the dispositional order or enter a new dispositional order.

A child may also be returned to a parent's custody without a hearing or upon completion of a condition set by the court.⁴⁸

Unless waived, if not less than 7 days notice is given to all parties prior to the return of a child to the child's home, and no party requests a hearing within the 7 days, the court may issue an order without a hearing permitting the agency to return the child to the child's home.

At a Permanency Planning Hearing the court will also reevaluate a child's placement and change it if appropriate.⁴⁹

4.7. CHANGE IN FOSTER CARE PLACEMENT

4.7.1. Stability of Placement is Goal

An agency is not to change a child's foster care placement unless the person providing foster care requests or agrees with the change or, even if the person providing foster care objects, one of the following applies⁵⁰:

- (i) The court orders the child returned home.
- (ii) The change in placement is less than 30 days after the child's initial removal from his or her home.

⁴⁵. MCL 712A.19b(4)

⁴⁶. MCL 712A.19(6)(b); MCR 3.975

⁴⁷. MCL 712A.19(8); **MCR 3.975(G) (1), (2) and (3)**

⁴⁸. MCL 712A.19(10); MCR 3.975(H)

⁴⁹. MCL 712A.19a(5), (6) and (7); MCR 3.976

⁵⁰. MCL 712A.13b(1)(b)

- (iii) The change in placement is less than 90 days after the child's initial removal from his or her home, and the new placement is with a relative.
- (iv) The change in placement is in accordance with other provisions of this section.

4.7.2. *Notice to Foster Parents Required*

Except where the foster child has suffered abuse in the foster home or is at substantial risk of harm in the home (discussed in section 4.7.5. below), an Agency must do the following before a change in foster placement:

- (a) Notify the state court administrative office of the proposed change in placement.
- (b) Notify the foster parents of the intended change in placement and inform them that, if they disagree with the decision, they may appeal within 3 days to a foster care review board. A foster parent may appeal orally, but must submit the appeal in writing immediately following the oral appeal. The agency shall provide the foster parents with the address and telephone number of a foster care review board with jurisdiction over the child.
- (c) Maintain the current placement for not less than the time for appeal to the foster care review board and if a foster parent appeals, until the foster care review board determination.⁵¹

4.7.3. *Appeal to Foster Care Review Board*

Upon receipt of an appeal from foster parents, the foster care review board shall investigate the change in foster care placement within 7 days and shall report its findings and recommendations within 3 days after completion of the investigation to the court or, if the child is under MCI jurisdiction, control, or supervision, the MCI superintendent, to the foster care parents, to the parents, and to the agency.⁵² If after investigation the foster care review board determines that the move is in the child's best interests, the agency may move the child.⁵³

If, however, the foster care review board determines that the move is not in the child's best interests, the agency shall maintain the current placement until a finding and order by the court or, if the child is under MCI jurisdiction, control, or supervision, a decision by the MCI superintendent. The agency shall not return a child to a placement from

⁵¹. MCL 712A.13b(2)

⁵². MCL 712A.13b(3)

⁵³. MCL 712A.13b(4)

which the child was removed unless the court orders that placement's restoration or the MCI superintendent approves that placement's restoration.⁵⁴

4.7.4. *Court Review if Foster Care Review Board Objects to the Change*

The foster care review board shall notify the court, or if the child is under MCI jurisdiction, control, or supervision, the MCI superintendent, about the Board's and Agency's disagreement. The court shall set a hearing date and provide notice to the foster parents, each interested party, and the prosecuting attorney (if the prosecuting attorney has appeared in the case). The court shall set the hearing no sooner than 7 and no later than 14 days after receipt of the notice from the foster care review board. The rules of evidence do not apply to such hearings. Within 14 days after notification, the MCI superintendent shall make a decision regarding the child's placement and shall inform each interested party what the decision is.⁵⁵

After hearing testimony from the agency and any other interested party and considering any other evidence bearing upon the proposed change in placement, the court shall order the continuation or restoration of the placement unless the court finds that the proposed change in placement is in the child's best interests.⁵⁶

4.7.5. *Risk of Harm to Child Warrants Expedited Change of Placement*

If a child appears to be at risk in the foster home, the agency may move more expeditiously, although the foster parents still have review rights. The statute provides:

If the agency has reasonable cause to believe that the child has suffered sexual abuse or nonaccidental physical injury, or that there is substantial risk of harm to the child's emotional well-being, the agency may change the child's foster care placement without complying with subsection (1) or (2)(b) or (c). The agency shall include in the child's file documentation of its justification for action under this subsection. If a foster parent objects to the removal of a child under this subsection, he or she may appeal to the foster care review board within 3 days after the child's removal. The foster parent may appeal orally, but must submit the appeal in writing immediately following the oral appeal.⁵⁷

⁵⁴. MCL 712A.13b(5)

⁵⁵. MCL 712A.13b(5)

⁵⁶. MCL 712A.13b(6)

⁵⁷. MCL 712A.13b(7)

At the time of a child's immediate removal, or shortly thereafter, the agency is required to inform the foster parents about the removal and that, if they disagree, they may appeal within 3 days, to the foster care review board.⁵⁸ The agency shall provide the foster parents with the address and telephone number of a foster care review board with jurisdiction over the child.

⁵⁸. MCL 712A.13b(8)